IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CIVIL WRIT PETITION NO. 15725 OF 2006

DATE OF DECISION: November 09, 2006

Parties Name

M/s Mohan Poultry Farms

..PETITIONER

VERSUS

Punjab & Sind Bank and another

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASBIR SINGH
HON'BLE MR. JUSTICE PRITAM PAL

PRESENT: Mr. Arihant Jain,
Advocate, for the petitioner.

Mr. Sanjay Majithia, Adv., with Mr. K.C.Mahajan,
Advocate,;

JASBIR SINGH, J. (oral)

Order.

By filing this writ petition, petitioners have prayed for quashing the notices dated July 18, 2006 (Annexure P-2) and July 31, 2006 (Annexure P-4), issued under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short the 2002 Act). On September 28, 2006, when notice of motion was issued, following contention of counsel for the petitioner was noticed:

> "Counsel for the petitioner states that for effecting recovery from the petitioner, matter is pending before the Debts Recovery Tribunal at Chandigarh. Despite that, notice under Section 13(2) of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, has

been issued to the petitioner. Counsel further states that respondent – Bank cannot avail two remedies as has been held by this Court in M/s Kalyani Sales Company and another v. Union of India and another (2006-1) P.L.R. 1."

Reply has been filed, wherein it has been said that it is open to the Bank to continue with the proceedings under the 2002 Act and also under the Recovery of Debts due to Banks and Financial Institutions Act, 1993 (for short the 1993 Act) and further that the petitioner has a remedy of appeal under Section 17 of the 2002 Act. We are of the opinion that the stand taken by the respondent - Bank is not justified. Similar controversy came up before this Court in Kalyani Sales Company and another v. Union of India and another, 2006(1) R.C.R. (Civil) 557. After noticing arguments in that regard, it was observed as under:

"39. The words appearing in the first proviso "if no such action had been taken earlier under the Act "are recognition of the fact that proceedings under the Act can be initiated only once. The concluding words "that Act" refers to 2002 Act. Thus, a conjoint reading of the provisions makes it clear that if the bank has filed an application for recovery under Section 19 of the RDB Act, either before or after 11.11.2004, it has the liberty to take recourse to the provisions of the Act for realisation of secured assets, provided no action for recovery in terms of the Act has been taken earlier. In the absence of statutory notice under Section 13(2) of the Act, no measure can be taken under Section 13(4) of the Act. A notice under Section 13(2) of the Act is a prerequisite for an action under sub-section (4) of Section 13 of the Act. The bank or the financial institution is

required to withdraw an application filed under Section 19 of the RDB Act before the Debts Recovery Tribunal before initiating any proceedings under the Act. Similarly, the bank would have liberty to withdraw the suit pending before the Civil Court in respect of debts less than Rs. 10 lacs with permission to the said court. Therefore, we are not inclined to accept the plea of the respondents that it is open to Bank or financial institution to simultaneously take recourse to two parallel remedies.

The judgment of the Kerala High Court shows that it relies upon Section 37 of the Act to hold that the remedy provided is additional remedy, which can be invoked unless specifically barred. It is, thus, apparent that remedy under the Act has been found as an additional remedy. Once it is an additional remedy, the doctrine of election has to be applied. The said aspect had not been brought to the notice of the Court."

We are of the view that this matter is squarely covered by the ratio of the judgment, referred to above. Consequently, we allow this writ petition and quash the notices (Annexujres P-2 and P-4), issued to the petitioner, under Section 13(2) of the 2002 Act. However, the respondent – Bank is permitted to continue with its remedy, available to it, under the 1993 Act.

(Jasbir Singh)
Judge

(Pritam Pal)
Judge

November 09, 2006.
DKC